

OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION

of

Edmund G. Brown
Attorney General;
William J. Power
Deputy Attorney General

No. 54/234

Jan. 12, 1955

NOTE: SAME AS: 25 ATTY. GEN. OPS. 65 (1955)

HONORABLE GORDON A. FLEURY, ASSEMBLYMAN FROM
THE EIGHTH DISTRICT, has presented the following
question:

Is publication of the delinquent tax list in
less than all editions of a newspaper a compliance with
Revenue and Taxation Code section 3356? *

Our conclusion may be summarized as follows:

Publication of the delinquent tax list must
be made in all editions of the issues of the newspaper
which carries the delinquent tax notice.

*Sec. 3356, R&TC, was repealed by Stats. 1967, pg. 2342, in effect 11/8/67.
See Sec. 3353 R&TC

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ANALYSIS

Revenue and Taxation Code sections 3351 et seq. prescribe the information that is to appear in the delinquent tax list and the procedure that is to be followed by the tax collector in preparation for the sale of delinquent property. Revenue and Taxation Code section 3356 provides that the delinquent tax list shall be published "....once a week for three successive weeks in a newspaper of general circulation published in the county. If no newspaper of general circulation is published in the county, the publication shall be made by posting in three public places in the county.

"The cost of publication shall be at no more than the rate fixed by the board of supervisors for other county advertising."

Certain special provisions regarding publication not material to the present inquiry are found in*Revenue and Taxation Code sections 3391-3403. These sections purport to establish a special procedure to be followed in counties of the first class (see Consolidated Printing & Pub. Co. v. Allen, 18 Cal.2d 63).

Government Code section 6000 reads as follows:

"A 'newspaper of general circulation' is a newspaper published for the dissemination of local or telegraphic news and intelligence of a general character, which has a bona fide subscription list of paying subscribers, and has been established, printed and published at regular intervals in the State, county, or city where publication, notice by publication, or official advertising is to be given or made for at least one year preceding the date of the publication, notice or advertisement."

Further detailed qualifications of a newspaper of general circulation are set forth in Government Code sections 6001-6007. Government Code section 6027 provides that on and after July 1, 1952 a newspaper shall not be in fact or in law a newspaper of general circulation unless it obtains or has theretofore obtained a judicial decree establishing it as such.

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In many areas of the State there may be found two general classes of newspapers. The first is the daily paper having a circulation among practically all classes in the area it serves. It is generally a member of a nationwide press association and prints local, national and international news that is of interest to wide segments of the entire community. It is distributed in both business and residential localities and may be purchased at stores and news stands. As opposed to the general interest daily newspaper, there are what may be described as legal, commercial, or local newspapers, which, though established as newspapers of general circulation, do not have the distribution of the general interest daily paper and whose news coverage and appeal is more limited.

It is readily conceivable that a notice carried in a limited edition of a large daily newspaper devoted to spreading general intelligence might give more widespread publicity than a notice published in every copy of a particular issue of a legal or local newspaper. But for the purposes of Revenue and Taxation Code section 3356, no distinction may be made between legal, commercial, or local newspapers on the one hand and a general interest newspaper. Any newspaper that has been established as being of general circulation is the equal of other newspapers regardless of differences in circulation. If the county could contract for the carrying of the delinquent tax list in a special or limited edition of a daily newspaper it could do the same with a legal paper. Thus a newspaper which barely qualified could by special arrangement carry official notices in an edition of even smaller circulation than its already limited regular edition. It is on the strength of its regular circulation that a newspaper is established as being of general circulation. Publication of a special edition which is not delivered or made available to all purchasers in the same manner as regular editions of the paper is something other than publication in the newspaper whose status has been fixed.

Distribution of the delinquent tax list to all subscribers of a small paper guarantees a certain minimum amount of publicity. Distribution to less than all subscribers of a larger paper provides no minimum, but rather vests in the county authorities the power to curtail the notoriety to be given to the delinquent list. If the delinquent list is not required to appear in every copy of the paper printed on the day it is published, there is no minimum whatsoever.

Prior to 1921, Political Code section 3766 (the predecessor of Revenue and Taxation Code section 3356), provided that the delinquent tax list should be published "...once a week for three successive weeks, in some newspaper or supplement thereto, published in the county;...."

In Tully v. Bauer, 52 Cal. 487, it appears that the delinquent list was published in a supplement to a newspaper and the supplement was not delivered to subscribers of the paper living outside of the county of publication. The publication was held to be insufficient, the court saying the supplement must be distributed co-extensively with the paper. Though the opinion in Tully v. Bauer does not speak of the papers delivered outside of the county as being a separate edition, such actually was the case. There were two sets of newspapers published on that day, one set carrying the delinquent list, the other not. Changes in the law since Tully v. Bauer was decided have tightened rather than relaxed the requirements necessary to constitute a valid publication. Publication now must be made in a newspaper of general circulation and the list must appear as a part of the paper itself (Penaat v. Terwilliger, 23 Cal.2d 865; Clayton v. Schultz, 22 Cal. App.2d 72). What was not sufficient when the delinquent list could be published as a supplement in any newspaper is not sufficient when the list must be printed as an integral part of a newspaper of general circulation, whose status as such must have been established by court decree.